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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/743,666	01/10/2001	Jeffery Raymond Ratkus	DN1998124US	5727

7590

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Frederick K Lacher  
The Goodyear Tire & Rubber Company  
1144 East Market Street  
Department 823  
Akron, OH 44316

EXAMINER

PRONE, JASON D

ART UNIT

PAPER NUMBER

3724

DATE MAILED: 04/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/743,666

Applicant(s)

RATKUS ET AL.

Examiner

Jason Prone

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 January 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.                      6) ☐ Other:

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## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: On page 3 line 28, item "A-A". On page 4 line 7, item "48". A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 1-12, the phrase "characterized" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. The transitional phrase (i.e. between the preamble and the body of a claim) "characterized" and phrases incorporating it ("characterized by", "characterized in that", etc.) are common in applications of European origin in us practice claims containing these words and phrases may be rejected under 35 USC 112 paragraph two when characterized may connote more than mere description (the dictionary definition); in scientific parlance characterization may imply one or more physical steps or procedures

(e.g. structure determination, elemental analysis, or qualitative tests) to identify a product. Since it is rare that applicant intends more than a mere description when using this language, physical steps are rarely disclosed. As Such, the reader may be unsure about the meaning of the wording of the claims, and additionally the scope of the claim is often unclear ("characterized" conveys no degree of openness). Usually these troublesome words or phrases can be replaced by the standard transitional words "having", "comprising", and "wherein".

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Murphy et al. in view of Felten. Murphy et al. discloses the invention including a knife assembly (44), means for traversing the knife assembly between a first and a second lateral edge of the ply stock (Fig. 4), a blade (40) having a cutting portion (Fig. 8) including a leading point (56) and a leading and trailing edge having a length (Fig. 8), that the ply stock has spaced first and second lateral edges (66 {and its opposite}), that the knife assembly traverses across the ply stock to provide severance of the material from the first lateral edge to the second lateral edge (Fig. 4), an anvil (36) with a slot (38) aligned with the cut line (Fig. 4), a means for heating the knife (Column 1 lines 13-28), that the knife is heated before inserting into the ply stock (Examiner notes that it is

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inherent to heat the knife before hand. The heated knife's purpose is to allow for easier cutting, there is no reason to start off with a cold knife and make a difficult cut), that the heating means is near the first lateral edge of the ply stock (Column 4 lines 4-9), and that the leading edge of the cutting portion engages with the ply stock (Fig. 4) but fails to disclose a means for moving the knife assembly normally towards and away from the ply stock, inserting the leading point at an insertion point spaced a distance from the first lateral edge, inserting the lead point into the slot after going through the ply stock, and a home position directly above an insertion point. Felten teaches the use of a means for moving the knife assembly normally towards and away from the ply stock (Figs. 7 & 8), inserting the leading point at an insertion point spaced a distance from the first lateral edge (Fig. 8 {Examiner notes the apparatus claimed by Felton is capable of inserting the blade at any point on the ply stock including the insertion point disclosed by applicant}), inserting the lead point into the slot after going through the ply stock (Figs. 7 & 8), and a home position directly above an insertion point (Fig. 7) to Murphy et al. Therefore, it would have been obvious to one skilled in the art, at the time of the invention, to have provided Murphy et al. with the knife assembly that can move towards and away from the ply stock for the ability of cutting thicker materials.

Murphy et al. and Felten fail to disclose a concave and convex portion of the leading edge, trailing edge that has a generally linear profile and is at a 20° to 40° incline to the plane of the ply stock. It would have been an obvious matter of design choice to make the different portions of the cutting blade of whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within

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the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47.

**Conclusion**

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hand, Carmody, Lagain, Borzym, Hudson et al., Tsai, Butkus et al. and Rothemeyer et al.


7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is 703-605-4287. The examiner can normally be reached on 7:30-5:00, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on 703-308-1082. In lieu of mailing, it is encouraged that all formal responses be faxed to 703-872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.



JP  
April 4, 2002



M. Rachuba  
Primary Examiner